

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on March 4, 1999 at 7:58 A.M., in Room 108 Capitol.

ROLL CALL

Members Present:

Sen. Chuck Swysgood, Chairman (R)
Sen. Tom Keating, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Chris Christiaens (D)
Sen. William Crismore (R)
Sen. Eve Franklin (D)
Sen. Greg Jergeson (D)
Sen. Bob Keenan (R)
Sen. J.D. Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Mesaros (R)
Sen. Ken Miller (R)
Sen. Arnie Mohl (R)
Sen. Linda Nelson (D)
Sen. Debbie Shea (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Shannon Gleason, Committee Secretary
Pam Joehler, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 439 SB 198 SB 459,
3/1/1999

Executive Action:

HEARING ON SB 443

Sponsor: **SEN. MIKE HALLIGAN, SD 34, MISSOULA**

Proponents: **Karla Gray,** Supreme Court Justice
 John Connor, Attorney General's Office
 Montana County Attorney Association
 William Hooks, Montana Appellate Defenders Office
 Debbie Smith, Attorney with Reynolds, Motl, and
 Sherwood
 Montana Common Cause

Opponents: **Dan Shea,** Former Supreme Court Justice

Opening Statement by Sponsor:

SEN. HALLIGAN advised this bill was heard in Judiciary and referred because of the fiscal note. **SEN. HALLIGAN** advised the bill sets up a five judge Intermediate Appellate Court, something new to Montana. The judges would originally be appointed by the Governor to a staggered term, and when the term expires be required to run for the office. The five districts would be the same as the Public Service Commission. The judges would sit on panels of three, each would serve an eight year term, the pay would be 95% of the Supreme Court pay, and the judges would have the same qualifications as the Supreme Court Justices. The Appellate Court would oversee all cases except death penalty, life sentences, and State Constitution statutes. **SEN. HALLIGAN** advised this was based on a model from Nebraska and is an effort to reduce the case load on the Supreme Court, thus enabling the court to concentrate and render opinions on the significant cases that involve and require more time.

Proponents' Testimony:

Karla Gray, Justice of the Montana Supreme Court, read **EXHIBIT (fcs49a01)**.

John Connor, Attorney General's Office, advised the committee he was in support of this bill because the court is not in a position to devote the time and attention needed to review and render opinions on significant items. **Mr. Connor** felt there were cases requiring a more in-depth opinion than what is being rendered and was concerned with the future impact and possibility of mistakes.

William Hooks, Chief Appellate Defender, advised the committee his office represents indigent defendants who appeal to the

Supreme Court. **Mr. Hooks** advised the cases he handles are weighty issues such as death penalty and Constitutional issues, and under Montana law the court must review the entire record for each case completely, regardless of the merit. **Mr. Hooks** felt if the court were free from less demanding issues the more significant cases would be handled more expeditiously.

Debbie Smith, Attorney, supported this bill because it would allow better access to the court by the public. **Ms. Smith** explained the mediation process and cited a case that was mediated, then the decision by the mediator was overturned by the Supreme Court and although her clients won the case the cost to them was over \$15,000.00. **Ms. Smith** thought the intermediate court could have handled this at a reduced cost to her clients.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 8:20}

Dan Shea, former Justice of the Supreme Court, advised he agreed with the need, however there was no authority in the Montana Constitution to create the court. **Mr. Shea** cited article seven of the Judicial article stating there can be no court between the District Court and the Supreme Court. **Mr. Shea** advised the article stated "such courts as provided by law" and section 4:3 stated other courts could handle cases that are not criminal, those stay in District Court. **Mr. Shea** stated the laws says "other courts concurrent with the District Court", and thus the Legislature can not create a court higher than the District Court. **Mr. Shea** advised the Constitution needs to be amended to create the court and handed out **EXHIBIT(fcs49a02)**, a letter written last session regarding a similar bill.

Questions from Committee Members and Responses:

SEN. MILLER asked **Justice Gray** if she agreed with this interpretation and wondered why the court thought it was possible to create the intermediate court. **Justice Gray** advised the court's interpretation of article 7 section 1 of the Constitution was "such other courts as may be provided by law". **Justice Gray** commented the legislature has established other courts in the past and felt this was no different.

SEN. LYNCH thought there was a group formed last session to review this issue and they recommended a further study, **Justice Gray** advised that was correct, however there are some items that are studied to death and the court felt this was one of them.

SEN. LYNCH commented states with a larger population than Montana have three members serving on a Intermediate Court and he wanted to know why the court felt there was a need for five judges.

Justice Gray advised the bill stated the majority of appeals would go to the Intermediate Court and they felt three would not be able to handle the case load.

SEN. NELSON wondered if the office space was available for the administrative staff. **Justice Gray** advised there was not enough space available for office staff, however their court room would be utilized. **Justice Gray** advised one of the sizable outlays in the fiscal note was for rent calculated at \$13.00 per sq. foot for a 12,000 sq feet office, however **Justice Gray** thought this could be reduced.

SEN. NELSON noted the salary was 95% of the justices' and wanted to know how that figure was determined. **Justice Gray** advised it was the median percentage between the District Court and the Supreme Court.

SEN. TAYLOR questioned the number of law clerks, **Justice Gray** advised that was the number the Supreme Court used. **SEN. TAYLOR** asked about Idaho's Intermediate Court, **Justice Gray** advised Idaho's court has defluctive jurisdiction, meaning the Supreme Court reviews the cases it feels should be sent to the Intermediate Court. **Justice Gray** noted it was less expensive but still required a substantial amount of time to review the cases and that defeats the purpose of the court.

SEN. SHEA wanted someone to explain why the judges were appointed instead of elected. **Justice Gray** advised the terms needed to be staggered and if the judges were all elected up front they would all be up for re-election at the same time, the initial appointment would be with staggered terms allowing for the court to be set up now and required elections once the appointed term was up. *{Tape : 1; Side : B; Approx. Time Counter : 0}*

SEN. MAHLUM wondered if there were two law clerks for each District Court. **Justice Gray** advised there were not, most had one.

SEN. KEATING stated in the testimony it was implied there were some bad decisions and wondered if 2/3 of the cases are civil rather than criminal, and if delays were hurting people. **Justice Gray** advised that was the concern of the court and explained it was the people's business they do. Although the Justices have struggled to keep the backlog down, people in Montana are waiting too long for a decision. **SEN. KEATING** asked if there was a

financial hardship to the people waiting. **Justice Gray** advised she thought there were. **Justice Gray** noted the cases dealt with items such as wrongful discharge, where a person needs to get back to work or monetary judgements where interest accrues on the judgement while it is under appeal.

SEN. BECK wanted an explanation of the five members from different districts meeting three at a time and how that would work, **Justice Gray** advised the judges would live in Helena, sit in three judge panels, and operate similar to the Supreme Court.

SEN. BECK advised if the number were changed from five to three the work load would be reduced. **Justice Gray** concurred and noted the jurisdiction language would have to be changed and she was unsure how that would work. **SEN. BECK** wanted to know who determined what went to the Supreme Court. **Justice Gray** advised the bill provided three mechanisms for that: a party could petition the Supreme Court to bypass the Intermediate Court based on certain criteria, the Intermediate Court could request the Supreme Court to take a case, or the Supreme Court itself could request a case.

SEN. BECK noted he was trying to support this idea and hold the fiscal note to a minimum, however it appeared that was not possible at this time. **Justice Gray** advised it may be possible, she was just not sure how the language would need to be changed to complete that.

SEN. TAYLOR wanted clarification of the expenses. **Lisa Smith** advised the committee the rent was in the operating expenses and the equipment total of \$419,000.00 was included in the budget.

SEN. TAYLOR wanted a break out of the equipment. **CHAIRMAN SWYSGOOD** advised the entire committee should have a copy of it.

SEN. CHRISTIAENS wondered if there were time requirements to reviewing cases. **Justice Gray** advised statute requires a time requirements on death penalty and parental rights cases. **SEN. CHRISTIAENS** asked if there were cases where the court did not meet the deadline, **Justice Gray** advised there were internal rules amongst the Justices for opinions, and was that originally 30 days but has been changed to 90 or 120 days.

Closing by Sponsor:

CHAIRMAN SWYSGOOD advised he would allow **SEN. HALLIGAN** to research the concerns raised by former **Justice Shea** and close at a later time. {Tape : 1; Side : B; Approx. Time Counter : 8:55}

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Gloria Paladichuk, Richland Economic Development, noted the smaller communities offer a lot to the state through mining and mineral explorations such as coal, oil and gas and thought this was one way for the state to assist with the development of the smaller communities

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JERGESON wanted to know where the second reading copy was and what the amendments were, specifically if the language in section four had been amended to strike the appropriation. **SEN. THOMAS** advised he had spoken to **Dave Lewis** and Legislative Services Division, who assured him the language as written was not an appropriation so it was not changed. **SEN. THOMAS** commented if the bill needed to be amended to insure it was not an appropriation that should be done, and it was not his intent to appropriate money, simply set up the program.

SEN. JERGESON questioned the Class II or smaller wording and asked if that was an amendment, **SEN. THOMAS** advised that was a change made by the **Business and Industry Committee**.

SEN. TOEWS questioned the two full time employees requested, **SEN. THOMAS** felt they would not be necessary.

SEN. BECK thought this was a duplication of the **TSEP** funds, **SEN. THOMAS** did not feel that was the case since these funds were intended for infrastructure for an industrial park. **SEN. BECK** read the definition of infrastructure and commented it is the same thing the **TSEP** funds are designed to cover. **SEN. THOMAS** advised he did not want to take that wording out because there may be a need for upgrade in the future and striking the verbiage would make it difficult to upgrade. *{Tape : 1; Side : B; Approx. Time Counter : 9:10}*

SEN. MILLER pointed out the language "technically and financially feasible" and thought if the project was technically and financially feasible there would be no need for this program since there were several financing sources available with low rates. **SEN. THOMAS** thought the terms technically and financially feasible applied to the after product and noted there were 1001 reasons not to do this, however Montana is still 51st and this idea may help pull the state out of that ranking.

SEN. TAYLOR wanted to know how this money would be administered, **SEN. THOMAS** advised it would go directly to economic entities to set up the projects and noted there is no provision for administration costs to local entities.

SEN. WATERMAN referred to page three lines 8-10, addressing administrative purposes, and thought Helena could apply for a grant and use the funds to set up a local economic development staff, **SEN. THOMAS** advised he would check into that because that was not the intent of this bill.

CHAIRMAN SWYSGOOD advised this bill was an appropriations bill, and stated the Fiscal Note does not determine the law, but the bill specifically states \$5,000,000.00 from the General Fund to be set aside for this program and felt this bill was not appropriate to be in the Senate. **SEN. THOMAS** advised if the bill needs to be amended it should be done, and added the intent was to set up a program that could later be financed through appropriations.

Closing by Sponsor:

SEN. THOMAS advised he would have amendments prepared to correct the items brought to his attention. *{Tape : 1; Side : B; Approx. Time Counter : 9:18}*

HEARING ON SB 198

Sponsor: **SEN. CHRIS CHRISTIAENS, SD 23, GREAT FALLS**

Proponents: None

Opponents: **Mike Mahoney,** Warden, Department of Corrections
Joe Williams, Fiscal Officer, Department of Corrections

Opening Statement by Sponsor:

SEN. CHRISTIAENS advised this bill would allow the Department of Corrections to discharge inmates on the 1st of the month and grant discharge credits up to 30 days. **SEN. CHRISTIAENS** was on the corrections oversight committee during the last interim and this was a recommendation by that committee to help reduce jail costs that are currently running \$56.16 per day and prison costs running \$49.24 per day, in addition to outside medical and administration costs. At the time this bill was drafted there were 140 inmates in the system and the Fiscal Note originally

indicated a savings of \$600,000.00 per year. **SEN. CHRISTIAENS** stated the saving would occur when inmates were not held in county jails and based on his research this would save a considerable sum of money. **SEN. CHRISTIAENS** referred to **EXHIBIT(fcs49a03)** and **EXHIBIT(fcs49a04)** and urged the committee to read the books. **SEN. CHRISTIAENS** noted part of the problem was that 50% of the inmates returned back to the system. Seven of the 116 persons whose parole was revoked had committed new crimes, the remaining were reincarcerated because of technical violations to their parole. **SEN. CHRISTIAENS** thought it was time to look at other options, and added the \$23,500.00 Fiscal Note is incorrect because the savings would be more. **SEN. CHRISTIAENS** also thought the savings could be used to support counseling programs in the prison. *{Tape : 2; Side : A; Approx. Time Counter : 0}*

Proponents' Testimony: None

Opponents' Testimony:

Mike Mahoney, Warden for the MT. State Prison, read **EXHIBIT(fcs49a05)**.

Joe Williams, Fiscal Officer for the Department of Corrections, handed out **EXHIBIT(fcs49a06)** and felt this bill would jeopardize \$2,000,000.00 in the Federal Violent Offender Incarceration funds, thus causing a negative impact to the budget.

Questions from Committee Members and Responses:

SEN. BECK understood the concern with the violent offenders but wondered if this program could work with the pre-release centers, **Warden Mahoney** advised they are still prisoner status and there are times when the board grants parole upon completion and other times when the board will not release inmates into pre-release system. **Warden Mahoney** thought the numbers would be so small it would not have an impact.

SEN. BECK questioned why the proposal presented in **Long Range Building** showed two projects using Federal Funds totaling \$11,000,000.00, and now there is only \$9,000,000.00 in Federal Funds. **Joe Williams** advised that was a decision by the budget office in anticipation of possibly obtaining future Federal Funds. **Mr. Williams** advised he did not agree with using the figures and felt no more Federal Funds would be forthcoming. *{Tape : 2; Side : A; Approx. Time Counter : 9:41}*

SEN. KEATING asked how releasing someone on the first of the month rather than the 15th of the month resulted in a savings,

SEN. CHRISTIAENS advised the saving was a result of the daily charge for that prisoner not being assessed. **SEN. KEATING** asked if that meant the sentence was reduced, **SEN. CHRISTIAENS** advised it does and that is why the bill allows for up to a 30 day pre-release. **SEN. CHRISTIAENS** stressed the wording "may be released" and commented the department has the option to keep the violent offender incarcerated the entire term of the sentence. **SEN. CHRISTIAENS** thought it was interesting the department referred to a \$262,000.00 saving, adding that was **Mr. William's** number, not his. **SEN. CHRISTIAENS** thought if the department were allowed only the \$23,000.00 it felt would be saved, there would be a huge outcry from them because there was no way to house the inmates with that small of a dollar figure.

SEN. KEATING noted the credits are "good day time" given at the discretion of the warden, **SEN. CHRISTIAENS** advised they were at the discretion of the department, and added in the past up to 180 days were allowed for good time.

SEN. KEATING wanted to know why the good time impacted the federal money if they were released a few days early, **Mr. Williams** stated it had everything to do with it, and advised the grant is called the Violent Offenders Truth in Sentencing Act and requires the majority of an inmate's sentence to be served. **SEN. KEATING** asked if that was for violent offenders only, **Mr. Williams** advised it was for all offenders and the grant was designed as an incentive to keep prisoners incarcerated for the majority of their sentence.

SEN. TAYLOR asked what treatment the offender would be missing if they were released four days early, **Mr. Williams** advised none, and stated if the offender got out four days early and hit someone on the head, the state would be sued because the inmate was released early. **SEN. TAYLOR** asked what happens if they were kept until the first of the following month, **Mr. Williams** advised it would cost about \$6.00 per day and thought another problem with releasing all the inmates together was that it allowed them a chance to conspire with each other to do harm.

SEN. BECK commented he had faith in the Parole Board and wondered if the Parole Board felt someone was not eligible would **SEN. CHRISTIAENS** have a problem with not letting them out early. **SEN. CHRISTIAENS** advised he had no problem with not allowing the inmates out early and noted the department takes risks everyday by allowing for parole, so he did not agree with the increased risk argument presented by the department.

SEN. CHRISTIAENS referred to the last page of **Exhibit 6**, and noted the words "substantial portions of the sentences" and felt if only up to 30 days was granted that was not substantial. **SEN. CHRISTIAENS** noted not all the inmates are let go in the same place and same manner, so the chances of all the inmates getting together to cause harm was minimal.

CHAIRMAN SWYSGOOD stated it amazed him there was such a focus on the imminent danger of these released prisoners doing immediate harm. **CHAIRMAN SWYSGOOD** commented the possibility of losing Federal Funds was "hogwash", as serving all but 29 days of a sentence was not substantial. **CHAIRMAN SWYSGOOD** felt the inmates were being released sooner or later, and the pre-release was discretionary.

Warden Mahoney advised the committee he understood the frustration with the department, his presentation was to point out there was a liability to the state if inmates were released early and noted the **Strattenberg vs. Coreless** case.

Closing by Sponsor:

SEN. CHRISTIAENS closed.

CHAIRMAN SWYSGOOD appointed a subcommittee to review the changes to **SB 200** and report back to the full committee on 3/9/99. The subcommittee selected was as follows: **SEN. TAYLOR, CHAIR** **SEN. KEATING**, and **SEN. NELSON**.

ADJOURNMENT

Adjournment: 9:50 A.M.

SEN. CHUCK SWYSGOOD, Chairman

SHANNON GLEASON, Secretary

CS/SG

EXHIBIT (fcs49aad)